

Louis Flores
34-21 77th Street, No. 406
Jackson Heights, New York 11372
louis.flores@progressqueens.com
1 (929) 279-2292

09 August 2017

Honorable Colleen McMahon, Chief U.S. District Judge,
United States District Court - Southern District of New York,
500 Pearl Street,
New York, New York 10007-1312.

Dear Hon. Judge McMahon :

Re : **Louis Flores v. United States Department of Justice**
No. 17-CV-0036 (Koeltl, J.)

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S.D. OF N.Y.

I am *pro se* Plaintiff appearing *in forma pauperis* in the above-captioned case.

Plaintiff commenced civil litigation to compel Defendant to respond to a request (the '**FOIA Request**') made under the Freedom of Information Act ('**FOIA**'), seeking four categories of records about the speeches (the '**Speech Records**') of former U.S. Attorney Preet Bharara. Defendant is represented by the U.S. Attorney's Office formerly headed by then U.S. Attorney Bharara. Litigation was commenced after Defendant refused to answer the administrative appeal filed by Plaintiff, as was required by FOIA.

At the Initial Conference on 13 April 2017, the Hon. John Koeltl stated that one of the factors that would determine whether His Honour would order Defendant to produce all of the records responsive to the FOIA Request would be preserving the reputation of the U.S. Attorney's Office.^{1/} Plaintiff sought the Speech Records, in part, because, "Notwithstanding the prolific nature of U.S. Attorney Bharara's speech-making, information about the dates and places for the numerous speeches given by U.S. Attorney Bharara are not completely known, and, importantly, complete audio or video recordings, or complete written transcripts, of those speeches are not publicly-available. Without this information, the public is unable to hear or read in U.S. Attorney Bharara's own words the important work being done by his office. I make the following requests for information in hopes of filling that void." See Ex. A at 2. Nowhere in the FOIA Request was there malice in the intent behind the making of the FOIA Request. The FOIA Request seeks four categories of records about the speeches given by the former U.S. Attorney in his official capacity.

Because of the Hon. Judge Koeltl's prejudice against *pro se* Plaintiff, Plaintiff seeks Your Honour's assistance in reassigning this case to a U.S. District Court Judge, who would not be prejudicial to *pro se* Plaintiff.

^{1/} Plaintiff apologises to the Court, but Plaintiff does not have a transcript of the proceedings of the Initial Conference.

First, it is important to note that the Hon. Judge Koeltl has a preconceived notion, which is not based on facts, that there is malice behind the intent of the FOIA Request. Second, it is important to note that, because of that preconceived notion, the Hon. Judge Koeltl has already stated that he was prepared to not compel Defendant to produce all of the records responsive to the FOIA Request. That is not how FOIA works.

Plaintiff seeks the Speech Records, because the speeches were given by the former U.S. Attorney in his official capacity. The former U.S. Attorney has stated that when he has given speeches, it was with an intent to communicate with other Government officials.^{2/} Furthermore, when the former U.S. Attorney was criticised for speaking about the Government's case against former New York State Assembly Speaker Sheldon Silver, the U.S. Attorney's Office made a Court filing to defend the then-U.S. Attorney's speech-making by describing the speech-making as being made in his official capacity.^{3/}

Since the Initial Conference, Defendant has made four productions of documents, some of them made in bad faith. After Plaintiff made a review of the FOIA Responses, Plaintiff identified priority records that required attention (the '**Priority Records**') and produced a list of questions (the '**Due Diligence List of Questions**'), the combined resolution of which could possibly lead to speedy resolution of this matter. Given the Hon. Judge Koeltl's bias, Plaintiff has been attempting to resolve this matter without the need for dispositive motion practice, which would need to go before the Hon. Judge Koeltl. After Defendant offered a weak response to the Due Diligence List of Questions, Plaintiff offered to settle this matter if the U.S. Attorney's Office would adopt a reform, namely, adopting for the U.S. Attorney for this U.S. Attorney's Office a standard for speech transparency used by senior Federal Reserve Bank Officials (the '**Proposed Reform**'). Under the Proposed Reform, Plaintiff requested that the U.S. Attorney's Office would make proactive disclosures under FOIA of a transcript and a recording, if a recording existed, of speeches made by the U.S. Attorney. Out of *desperation* to avoid having to return to the Hon. Judge Koeltl for judicial oversight, Plaintiff even made an offer to couple the Proposed Reform with a nondisclosure agreement, in order to both make the Proposed Reform palatable to Defendant and to achieve swift conclusion to the civil litigation. Additionally, Plaintiff offered to accept some good faith responses to the unanswered Due Diligence List of

^{2/} See Will Bredderman, *Preet Bharara Defends His Public Appearances at Zephyr Teachout Forum*, The New York Observer (06 Mar 2015), <http://observer.com/2015/03/preet-bharara-defends-his-public-appearances-at-zephyr-teachout-forum/> (wherein then U.S. Attorney Bharara defended his speech-making by saying, in relevant part, that, "Part of the reasons to have discussions like this, to talk about the problem, is not just to excoriate and warn people who might commit crimes," he said, adding that, "But it's to direct my words and exhortations to the ears of the vast majority of people, in any institution whether it's a school, or a bank, or it's a hedge fund, or it's a Council leader's office, or it's a legislature, who are good and honorable and honest and decent and want to do the right thing.")

^{3/} See Stephen Brown, *Preet Bharara's comments on Sheldon Silver's alleged corruption were within the law : prosecutors*, The New York Daily News (05 Mar 2015), <http://www.nydailynews.com/news/politics/preet-bharara-defends-comments-sheldon-silver-article-1.2139146> (noting that, in a Court filing by the U.S. Attorney's Office, Federal prosecutors defended the then-U.S. Attorney's speech-making, in part, by arguing that, "**It is squarely within the role and duty of the U.S. Attorney**, as the chief federal law enforcement officer in this district, to speak out about the causes of public corruption and potential means of combating it." (emphasis added)).

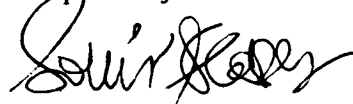
Questions if Defendant accepted the Proposed Reform. Defendant rejected the settlement offer. *See* Ex. B.

Plaintiff believes that Defendant refused to make good faith answers to the Due Diligence List of Questions and refused to accept the Proposed Reform, because Defendant is counting on the Hon. Judge Koeltl's stated bias against *pro se* Plaintiff in order to remain out of compliance with FOIA. Likely because of the Hon. Judge Koeltl's stated bias against *pro se* Plaintiff, Defendant has already suggested that Defendant is interested in commencing dispositive motion practice — so not only could Defendant exercise legal advantage over *pro se* Plaintiff by commencing protracted motion practise, but also because Defendant likely believes it will benefit from the Hon. Judge Koeltl's stated bias against *pro se* Plaintiff. If Defendant is allowed to commence dispositive motion practice, Plaintiff respectfully requests that the U.S. District Court reassign this case to another U.S. District Judge, so that *pro se* Plaintiff is not subjected to prejudice.

Plaintiff has had to mount an activist campaign, in part, to compel Defendant to answer the FOIA Request. The activist campaign included protesting outside the U.S. Attorney's Office^{4/} and to complete a liquids-only fast that ended on the twenty-second day to protest an early, unjust ruling issued by the Hon. Judge Koeltl to the benefit of Defendant.^{5/} According to a medical examination, Plaintiff lost approximately 40 lbs. due to the fast. Furthermore, the Hon. Judge Koeltl has, in the past, exhibited bias against activist civic leaders. In one notable instance, the Hon. Judge Koeltl ruled against the now late activist attorney, Lynne Stewart, by arguably sending her to an early grave after the Hon. Judge Koeltl increased her prison sentence at his sole discretion following an unusual request made by the Government.^{6/}

Because of the Hon. Judge Koeltl's stated bias against *pro se* Plaintiff, because Plaintiff has not ruled out launching another activism campaign before this matter is settled, and because of the Hon. Judge Koeltl's bias against activists, generally, Plaintiff respectfully requests that, if Defendant is allowed to commence dispositive motion practice, then Her Honour should, in the interest of justice, reassign this case to another U.S. District Court Judge, so that *pro se* Plaintiff is not prejudiced during dispositive motion practise.

Respectfully submitted,



Louis Flores

cc : Rebecca Tinio, Assistant U.S. Attorney (via E- Mail only)

^{4/} See Louis Flores, *Protest at U.S. Attorney's Office demanding release of records of Preet Bharara's speeches*, Progress Queens (30 Jan 2017), <http://www.progressqueens.com/news/2017/1/30/protest-at-us-attorneys-office-demanding-release-of-records-of-bhararas-speeches>.

^{5/} See Louis Flores, *#Fast4FOIA - Day Twenty-Two*, Fast 4 FOIA (20 Mar 2017), <https://fast4foia.tumblr.com/post/158624422143/fast4foia-day-twenty-two>.

^{6/} See John Eligon, *Sentence Is Sharply Increased for Lawyer Convicted of Aiding Terror*, The New York Times (15 July 2010), <http://www.nytimes.com/2010/07/16/nyregion/16stewart.html>.

Exhibit A

From: Louis Flores louis.flores@progressqueens.com
Subject: FOIA Request : Speeches of U.S. Attorney Preet Bharara (EOUSA) // Progress Queens
Date: 25 avril 2016 06:33
To: usaeo.foia.requests usaeo.foia.requests@usdoj.gov
Cc: James Margolin james.margolin@usdoj.gov, Louis Flores louis.flores@progressqueens.com



25 April 2016

REQUEST UNDER FREEDOM OF INFORMATION ACT
Expedited Processing Requested

Ladies and Gentlemen :

Good morning, I submit the attached request under the Freedom of Information Act, or FOIA, covering **four (4) categories** of documents (A) (1-4) pertaining to the speeches made by U.S. Attorney Preet Bharara.

In this FOIA Request, I ask for expedited processing, and I make a request for a fee waiver. Accordingly, I look for a written determination to be made **within ten (10) days**.

If you have any questions about the requests for these four (4) categories of documents, **please do not hesitate to contact me today**. See 28 eCFR § 16.3(b). See also *Davis v. DHS*, No. 11-CV-0203, 2013, WL 3288418 (E.D.N.Y. June 27, 2013)(Ross, J.) (noting that if an agency has questions about a FOIA Request, the agency should contact the requestor).

Thank you kindly.

Best regards,

-- Louis

Louis Flores
Publisher
Progress Queens
louis.flores@progressqueens.com
1 (646) 400-1168

Web : <http://www.progressqueens.com>
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Progress Queens, Inc.
34-21 77th Street, #406
Jackson Heights, New York 11372

Louis Flores
Publisher
louis.flores@progressqueens.com
1 (646) 400-1168

25 April 2016

VIA E-MAIL : USAEO.FOIA.REQUESTS@USDOJ.GOV

Susan B. Gerson, Acting Assistant Director,
FOIA/Privacy Unit,
Executive Office for United States Attorneys,
U.S. Department of Justice,
Room 7300, 600 E Street, N.W.,
Washington, DC 20530-0001.

Ladies and Gentlemen :

Re : REQUEST UNDER FREEDOM OF INFORMATION ACT
Expedited Processing Requested

This letter constitutes a request (« Request ») pursuant to the Freedom of Information Act (« FOIA » or the « Act »), 5 U.S.C. § 552 *et seq.*, the U.S. Department of Justice implementing regulations, 28 C.F.R. § 16.1 *et seq.*, the President's Memorandum of January 21, 2009, 74 Fed. Reg. 4683 (Jan. 26, 2009), and the Attorney General's Memorandum of March 19, 2009, 74 Fed. Reg. 49,892 (Sept. 29, 2009). I submit this Request as the publisher of Progress Queens, a news Web site.

This Request seeks information and records pertaining to speeches made by U.S. Attorney Preet Bharara, the nation's top Federal prosecutor for the Southern District of New York.

Because U.S. Attorney Bharara gives inspiring and witty speeches, he has become a popular public speaker. At a speech delivered on 23 January 2015 at New York Law School, U.S. Attorney Bharara referred to the many speeches he has delivered, saying, in relevant

part, that he speaks « to business groups and to students at business school, » adding that he speaks « to hedge fund industry folks and heads of banks and people, who are involved in compliance and law enforcement. »

As a consequence of the important work done by U.S. Attorney Bharara and the prosecutors of the U.S. Attorney's Office for the Southern District of New York, there are understandably great media and public interest in his speeches. For U.S. Attorney Bharara's speech delivered at New York Law School on 23 January 2015, he spoke to a capacity audience. Every seat was taken, and there were attendees forced to stand at the far end of the large conference room for his speech. There might even have been an over-flow room to accommodate the many other individuals, who could not fit into the main conference room, where U.S. Attorney Bharara spoke that day then. The media, who was present that day, widely quoted from U.S. Attorney Bharara's speech, because his office had filed a criminal complaint against then New York Assembly Speaker Sheldon Silver (D-Lower East Side) the day before, and the media and members of the public were eager to hear U.S. Attorney Bharara's remarks about the prevalence of political and campaign corruption in the New York State capital. A report filed by the journalist Marc Santora for *The New York Times* noted that U.S. Attorney Bharara lamented the loss of faith by voters in the face of political and campaign corruption, saying that, « When politician after politician after politician elected by the voters falls to criminal charges, people lose faith, » for example. See Marc Santora, *U.S. Attorney Criticizes Albany's 'Three Men in a Room' Culture*, *The New York Times* (Jan. 23, 2016), <http://www.nytimes.com/2015/01/24/nyregion/us-attorney-preet-bharara-criticizes-albanys-three-men-in-a-room-culture.html>. A report filed by the journalist Will Bredderman for *The New York Observer* noted that U.S. Attorney Bharara encouraged citizens to get involved in demanding reforms to address political and campaign corruption, saying, « When so many of their leaders can be bought for a few thousand dollars, they should maybe be angry. » See Will Bredderman, *Preet Bharara Blasts 'Three Men in a Room' After Sheldon Silver Arrest*, *The New York Observer* (Jan. 23, 2016), <http://observer.com/2015/01/preet-bharara-blasts-three-men-in-a-room-after-sheldon-silver-arrest/>.

Because of the great influence that U.S. Attorney Bharara exerts over Government and politics as a consequence of the corruption prosecutions brought by the U.S. Attorney's Office, he was named as the most powerful individual in the New York State capital in 2015 by *The New York Observer*. See Jillian Jorgensen et al., *State of Confusion : Albany's Top 40 Power Players*, *The New York Observer* (Oct. 6, 2015), <http://observer.com/2015/10/state-of-confusion-albanys-top-40/>.

Notwithstanding the prolific nature of U.S. Attorney Bharara's speech-making, information about the dates and places for the numerous speeches given by U.S. Attorney Bharara are not *completely* known, and, importantly, *complete* audio or video recordings, or *complete* written transcripts, of those speeches are not publicly-available. **Without this information, the public is unable to hear or read in U.S. Attorney Bharara's own words the important work being done by his office.** I make the following requests for information in hopes of filling that void.

A. Requested Records

1. All records and information pertaining to dates, times, hosts, locations, and other information pertaining to speeches made by U.S. Attorney Bharara since he commenced serving as U.S. Attorney for the Southern District of New York ;
2. All records, *complete* recordings in any format whatsoever (either digital or physical), *complete* transcripts, and other information pertaining to the *complete* speeches made by U.S. Attorney Bharara, including any question and answer sessions, since he commenced serving as U.S. Attorney for the Southern District of New York ;
3. All records and information pertaining to the costs of paid by the U.S. Attorney's Office for U.S. Attorney Bharara and his staff to travel to and attend the appearances made outside of Manhattan, where U.S. Attorney Bharara has delivered speeches, including, but limited to, air fare, ground transportation, hotel accommodations, meals, entertainment, *per diem* allowances, and all other costs incidental or associated with speeches made by U.S. Attorney Bharara ; and
4. All records and information pertaining to the policies, procedures, customs, traditions, guidelines, or other instructions followed by staff of the U.S. Attorney's Office for the Southern District of New York to record in any format whatsoever (either digital or physical), transcribe, and/or preserve any recordings and/or transcriptions of the speeches made by U.S. Attorney Bharara since he commenced serving as U.S. Attorney for the Southern District of New York.

B. Application For Expedited Processing

I request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) ; 22 C.F.R. § 171.12(b) ; 28 C.F.R. § 16.5(d) ; 32 C.F.R. § 286.4(d)(3) ; 32 C.F.R. § 1900.34(c). There is a « compelling need » for these records, because the information requested is urgently needed in order to be disseminated to inform the public about actual or alleged Federal Government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v) ; *see also* 22 C.F.R. § 171.12(b)(2) ; 28 C.F.R. § 16.5(d)(1)(ii) ; 32 C.F.R. § 286.4(d)(3)(ii) ; 32 C.F.R. § 1900.34(c)(2).

In addition, the records sought relate to a « breaking news story of general public interest. » *See* 22 C.F.R. § 171.12(b)(2)(i) ; 32 C.F.R. § 286.4(d)(3)(ii)(A) ; *see also* 28 C.F.R. § 16.5(d)(1)(iv) (providing for expedited processing in relation to a « matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence »).

As a reporter, I am « primarily engaged in disseminating information » within the meaning of the statute and regulations. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II) ; 22 C.F.R. § 171.12(b)(2) ; 28 C.F.R. § 16.5(d)(1)(ii) ; 32 C.F.R. § 286.4(d)(3)(ii) ; 32 C.F.R. § 1900.34(c)(2). Dissemination of information to the public is a critical and substantial component of my mission and work, and I have written about the need for the speeches of U.S. Attorney Bharara to be made public. *See, e.g., Preet Bharara gives a public speech before the press, but there is no recording or transcript. Why ?*, Progress Queens (April 9, 2016),

<http://www.progressqueens.com/editorial/2016/4/9/preet-bharara-gives-a-public-speech-before-the-press-but-there-is-no-recording-or-transcript>. I publish a news Web site, Progress Queens ; several blogs ; produce YouTube videos ; and manage several Twitter feeds.

The records and information sought directly relate to a breaking news story of general public interest that concerns the important and relevant public remarks made by one of the Federal Government's most influential officers, U.S. Attorney Bharara, who routinely speaks about matters pertaining to fighting political, campaign, and corporate corruption, as well as about the criminal charges that Federal prosecutors with the U.S. Department of Justice or other prosecutors bring against notable individuals in Government and business. The records and information sought will help inform the public about these subject matters, particularly given that the work in which the U.S. Attorney's Office for the Southern District of New York is engaged involves a history-making series of prosecutions targeting corruption that will lead to a wave of reforms in Government and business. For these reasons, the records and information sought relate to a « matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence. » See 28 C.F.R. § 16.5(d)(1)(iv).

There have been news reports in which U.S. Attorney Bharara has highlighted the importance of the work done by his office. In some of these news reports, U.S. Attorney Bharara has also placed an emphasis on his speech-making as acting as a form of a deterrence of corruption, thereby making his speeches a critical part of his duties as a significant Federal Government official. In a report published by *The New York Observer* about one of U.S. Attorney Bharara's speeches, it was noted that he « declared today that his corruption investigations would spur the improvement of a political system that he said had « broken down. » ». The same report further noted that U.S. Attorney Bharara argued « that raising the public's awareness of corruption is part of his job. » That news report quoted U.S. Attorney Bharara as saying, in relevant part, during his speech that, « So whether it's gang violence or cyber crime or national security or drug trafficking or a prescription pill epidemic or fraud on Wall Street, it's fundamentally important to talk about those issues so that ... we are not just focusing on prosecuting crime but also preventing and deterring [-] and raising public awareness is a central part of that responsibility. » See Ross Barkan, *Preet Bharara Says He'll Spur Improvement of Political System That Has « Broken Down, »* The New York Observer (April 24, 2015), <http://observer.com/2015/04/preet-bharara-says-hell-spur-improvement-of-political-system-that-has-broken-down/>. Despite the importance U.S. Attorney Bharara has placed on his speeches, his office does not uniformly post recordings or transcripts of his speeches online. A transcript exists for remarks he provided before a public hearing held by the Moreland Commission. See Preet Bharara, *U.S. Attorney Preet Bharara Testifies At The Public Hearing Of The Moreland Commission To Investigate Public Corruption*, U.S. Department of Justice (Sept. 18, 2013), <https://www.justice.gov/usao-sdny/speech/us-attorney-preet-bharara-testifies-public-hearing-moreland-commission-investigate>. See also Preet Bharara, *Prepared Remarks Of U.S. Attorney Preet Bharara Public Corruption In New York : More Than A Prosecutor's Problem Citizens Crime Commission*, U.S. Department of Justice (April 22, 2013), <https://www.justice.gov/usao-sdny/speech/prepared-remarks-us-attorney-preet-bharara-public-corruption-new-york-more> (making publicly-available a transcript of prepared remarks made by U.S. Attorney

Bharara at a speech delivered before an event hosted by the Citizens Crime Commission). However, similar publicly-available recordings or transcripts do not exist for all of his speeches.

Because some of these speeches take place in private setting, in locations outside of New York, or behind the paywalls of conventions that charge membership and/or registration fees, often the public or the media are unable to attend to record or Livestream the *entirety* of the speeches made by U.S. Attorney Bharara, necessitating this request. In the past, U.S. Attorney Bharara has delivered speeches in Stanford, California ; Frankfort, Kentucky ; and in the resort town of Saratoga Springs, New York, for example. *See* Stanford Graduate School of Business, *U.S. Attorney Preet Bharara on Leading Ethical Organizations*, YouTube (March 2, 2015), <https://youtu.be/NuWj6QmOra8> ; Rebecca Davis O'Brien, *Preet Bharara, in Kentucky, Rails Against Corruption*, The Wall Street Journal (Jan. 6, 2016), <http://www.wsj.com/articles/preet-bharara-goes-to-kentucky-to-speak-about-corruption-1452055126>. *See also* Nathan Tempey, *The FBI Is Investigating de Blasio's Fundraising, Too*, Gothamist (April 9, 2016), http://gothamist.com/2016/04/09/de_blasio_fund-raising_corruption.php (providing only *one quote* out of the *entire* speech made by U.S. Attorney Bharara in Saratoga Springs, New York).

In comparison, other significant Federal Government officials follow policies for making their speeches publicly-available. For example, Federal Reserve Bank officials post information about the date, location, and a transcript of their speeches on the World Wide Web, and this information is sortable by year and sometimes include hyperlinks to digital recordings of the speeches. *See, e.g.*, Board of Governors of the Federal Reserve System, *Speeches of Federal Reserve Officials*, Federal Reserve Bank (2016), <https://www.federalreserve.gov/newsevents/speech/2016speech.htm>. But for U.S. Attorney Bharara, such *complete*, publicly-available information does not appear to exist.

C. Application for Waiver or Limitation of Fees

I request a waiver of search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest, because it « is likely to contribute significantly to public understanding of operations or activities of the government and is not primarily in the commercial interest of the requester. » *See* 5 U.S.C. § 552(a)(4)(A)(iii) ; 22 C.F.R. 171.17(a) ; *see also* 28 C.F.R. § 16.11(k)(1) ; 32 C.F.R. § 286.28(d) ; 32 C.F.R. § 1900.13(b)(2).

As discussed above, numerous news accounts reflect the considerable public interest in the requested records and information. Given the ongoing and widespread media attention to this issue, the records and information sought in the instant Request will significantly contribute to public understanding of the operations and activities of the U.S. Attorney's Office for the Southern District of New York with regard to how it conducts its work to combat political, campaign, and business corruption. *See* 22 C.F.R. 171.17(a)(1) ; 28 C.F.R. § 16.11(k)(1)(i) ; 32 C.F.R. § 286.28(d) ; 32 C.F.R. § 1900.13(b)(2). Moreover, disclosure is not in my commercial interest. Any information disclosed by me as a result of this Request will be available to the public at no cost. Thus, a fee waiver would fulfill Congress's legislative intent in amending FOIA. *See Judicial Watch Inc. v. Rossitti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (« Congress amended FOIA to ensure that it be < liberally

construed in favor of waivers for noncommercial requesters. » » (citation omitted)) ; OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524, § 2 (Dec. 31, 2007) (finding that « disclosure, not secrecy, is the dominant objective of the Act, » but that « in practice, the Freedom of Information Act has not always lived up to the ideals of that Act »).

I also request a waiver of search and review fees on the grounds that I qualify as a « representative of the news media, » and the records and information are not sought for commercial use. *See* 5 U.S.C. § 552(a)(4)(A)(ii) ; 28 C.F.R. § 16.11(d). Accordingly, fees associated with the processing of the Request should be « limited to reasonable standard charges for document duplication. » *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II) ; *see also* 32 C.F.R. § 286.28(e)(7) ; 32 C.F.R. § 1900.13(i)(2) ; 22 C.F.R. 171.15(c) ; 28 C.F.R. § 16.11(d) (search and review fees shall not be charged to « representatives of the news media »).

I meet the statutory and regulatory definitions of a « representative of the news media » because I function as an « entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. » *See* 5 U.S.C. § 552(a)(4)(A)(ii)

* * *

Pursuant to applicable statute and regulations, I expect determination regarding expediting processing within 10 calendar days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I) ; 22 C.F.R. 171.12(b) ; 28 C.F.R. § 16.5(d)(4) ; 32 C.F.R. § 286.4(d)(3) ; 32 C.F.R. § 1900.21(d).

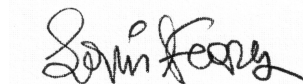
If the Request is denied in whole or in part, I ask that you justify all deletions by reference to specific exemptions to FOIA. We expect the release of all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

Thank you for your prompt attention to this matter. Please furnish all applicable records to :

Louis Flores
Progress Queens, Inc.
34-21 77th Street, No. 406
Jackson Heights, NY 11372

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief.

Sincerely,



Louis Flores

cc : James Margolin (via e-mail : james.margolin@usdoj.gov)

Exhibit B

Louis Flores <louis.flores@progressqueens.com>

8/7/2017 4:51 PM

RE: Flores v DOJ (17-CV-0036) (Koeltl, J.) ----- Review of FOIA Production

To Rebecca (USANYS) Tinio <rebecca.tinio@usdoj.gov> Copy Louis Flores <louis.flores@progressqueens.com>

Hi, Ms. Tinio :

I have some concerns.

Given that Judge Koeltl stated at the Initial Conference that he had a bias to protect the reputation of the U.S. Attorney's Office as a factor that would determine whether he would compel the Agency to produce all the responsive records ?

Before we discuss next steps about briefing, should we deal with the fact that the Judge has indicated that he is biased to benefit the Agency ?

Since you are not serious about settling this litigation, I contemplate writing an article about the fact that the Agency has rejected the framework of my settlement offer.

Lastly, it appears that you want to propose a briefing schedule without consulting with me about what that schedule should look like. I have other open records request litigation pending before the Courts or being contemplated. I would need to check my schedule before we could commit to what the briefing schedule should be, in all fairness. But we should not yet be committing to next steps until we are clear about whether you find acceptable the bias that the Judge has expressed to benefit the Agency, which would put the pro se Plaintiff at a distinct disadvantage throughout the remainder of the process, since the Judge has complete discretion to determine whether the Agency would ever be compelled to produce the withheld documents and to answer in good faith the outstanding questions before this litigation could be concluded with the Agency in full compliance with FOIA. Because the Judge has stated he is biased in support of the Agency, that bias will be material in ensuring that the pro se Plaintiff, on behalf of the public, may not receive a just outcome to this litigation. As an officer of the Court, are you O.K. with that possibility ?

Louis Flores
Publisher
Progress Queens
louis.flores@progressqueens.com
Skype : maslowsneeds
1 (929) 279-2292

Web : <http://www.progressqueens.com>
Twitter : @ProgressQueens
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On August 7, 2017 at 10:24 AM "Tinio, Rebecca (USANYS)" <Rebecca.Tinio@usdoj.gov> wrote:

Mr. Flores,

Thank you for your email. As I indicated in my last email, I am happy to talk with you by phone today, but that conversation would be limited to any questions you may have about our document releases in this

case, and what FOIA requires with respect to those document releases. If you don't feel that such a conversation would be helpful at this stage, we should discuss the next step in this case. I believe we would need to write to the Court, informing the Court that disputes remain. I would propose a briefing schedule for the Court's approval. Please let me know whether you would still like to confer by phone today.

Regards,

Rebecca S. Tinio
Assistant United States Attorney
United States Attorney's Office
Southern District of New York
86 Chambers Street, 3rd Floor
New York, NY 10007
p: (212) 637-2774
f: (212) 637-2702

From: Louis Flores [mailto:louis.flores@progressqueens.com]
Sent: Friday, August 04, 2017 12:21 PM
To: Tinio, Rebecca (USANYS) <RTinio@usa.doj.gov>
Subject: RE: Flores v DOJ (17-CV-0036) (Koeltl, J.) ----- Review of FOIA Production

I don't think we can settle this litigation without the U.S. Attorney's Office enacting some reform, so that pertinent speech records of the U.S. Attorney going forward are automatically made public. All I am looking for, in terms of proactive speech records being made public, would be a transcript and a recording, if a recording is available. That is the Federal Reserve Bank model for speech records transparency, as I understand it.

By adopting the Federal Reserve Bank model of speech transparency, the U.S. Attorney would automatically be making public speech documents, so that compliance with FOIA would automatically be being made once the speech documents are posted online. You are already almost there, but for the part about being willing.

FOIA provides for Agencies to make proactive disclosures. See 5 U.S.C. §552(a)(2). Adopting the Federal Reserve Bank model of speech transparency for the U.S. Attorney is within the scope of FOIA, and this reform is key for us to potentially achieve a swift and immediate settlement of this litigation by the conclusion of our call on Monday. If you announce this reform and make a good faith effort to answer the outstanding questions, some of which may be waived by the announcing of this reform, you could potentially forward to me a stipulation this week, so we can conclude this litigation within days. Because this litigation seeks to make public all the speech records of the U.S. Attorney, the Agency would be bringing itself into compliance with FOIA by committing itself to making proactive disclosures of transcripts and recordings, if recordings are available, of speech records going forward.

As an aside, by adopting the Federal Reserve Bank model for speech transparency, the Acting U.S. Attorney would be delivering a reform for the public. The records being sought here are records of speeches being given within the scope of the duty of the U.S. Attorney, as has been publicly expressed in the past by the former U.S. Attorney and in Court filings by the U.S. Attorney's Office. The records go to the thoughts, ideas, and interpretations of the U.S. Attorney about what is the law and what is not the law. These are important records, they are Federal records, and FOIA provides for Agencies to make proactive disclosures of records.

But more to the point, by delivering this reform, the Acting U.S. Attorney would be earning the faith and trust of the public, who have lost faith in the judicial system. I am trying to position the Acting U.S. Attorney to be seen as a people's champion. The public lacks confidence in our Government's institutions, and this would be a reform that the Acting U.S. Attorney could enact by self-declared policy that would give people the promise that they still have good actors within one of the Government's key institutions, this U.S. Attorney's Office. People lost faith in the office, in part, because the former U.S. Attorney used to speak in a nonpartisan nature about the need for reform and accountability, only to become a shill for the corrupt Democratic Party once he left office and by withholding his manuscript speech notes for exclusivity for his \$1 million book deal. What people need to see is a nonpartisan commitment for reform and accountability by the Acting U.S. Attorney. Making speech records proactively public will not compromise investigations, since the Acting U.S. Attorney will never do such in a speech. Making speech records proactively public will not place anymore burden on the Agency, since you already know that these are records that are responsive to FOIA Requests.

I am offering you a chance to position the Acting U.S. Attorney to be his own, self-made leader and to set an example for other Government officials to follow. I have tried to have a form of this conversation with one of the officials in your Press Office in the past, but he insulted me and then lied to me, making it clear that he didn't "get it." I don't know who is the one, who keeps giving bad advice to the U.S. Attorney about what it would mean to the public to have speech records automatically being made public. I am hoping that you, in your wisdom, will see the benefit to the U.S. Attorney to be setting a new example that could earn the public's faith and trust. I'm trying to work within the system, and the only way I will succeed, is if people have faith in the system. This is the larger issue at stake, and the Acting U.S. Attorney would be giving the public reason to have faith, and place trust, in him, and, by extension, in the system, by his willingness to demonstrate leadership that would earn the public's faith and trust.

Finally, if the Acting U.S. Attorney adopts the Federal Reserve Bank standard for speech records transparency, that would be a voluntary decision of his own making, not anything that I could lay claim to or credit for. Although that reform is key for us to achieve a swift and immediate settlement to this litigation, I would only publicly refer to the production of the records and your answers to my questions in any articles I would publish about the conclusion of this litigation, if this editorial offer helps in any way to win approval for the reform. I would be willing to sign a nondisclosure agreement to that effect. As a reporter, who sometimes wears the hat of an activist, I am more interested in the public interest right now, than I am in laying claim or credit for any "exclusivity" to any reform voluntarily announced by the Acting U.S. Attorney. The circumstances may never again present themselves for me to ever again make such a generous editorial offer to you.

Please let me know if I should plan to make myself available for the 10:30 a.m. call on Monday. If so, I will need a dial-in number, since I may not potentially be at home to make this call.

Louis Flores
Publisher
Progress Queens
louis.flores@progressqueens.com
Skype : maslowsneeds
1 (929) 279-2292

Web : <http://www.progressqueens.com>
Twitter : @ProgressQueens

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On August 4, 2017 at 10:58 AM "Tinio, Rebecca (USANYS)" <Rebecca.Tinio@usdoj.gov> wrote:

Mr. Flores,

Thank you for your email. If you would like to do a call on Monday, I would suggest 10:30am. For the sake of clarity, I would be available and happy to discuss your questions about the document releases and the requirements of FOIA, but other topics would not be within the scope of the litigation. Just let me know if you would like to go ahead with the call.

Best regards,

Rebecca S. Tinio
Assistant United States Attorney
United States Attorney's Office
Southern District of New York
86 Chambers Street, 3rd Floor
New York, NY 10007
p: (212) 637-2774
f: (212) 637-2702

From: Louis Flores [<mailto:louis.flores@progressqueens.com>]
Sent: Thursday, August 03, 2017 12:24 PM
To: Tinio, Rebecca (USANYS) <RTinio@usa.doj.gov>
Subject: RE: Flores v DOJ (17-CV-0036) (Koeltl, J.) ----- Review of FOIA Production

Hi, Ms. Tinio :

I can certainly do a call on Monday. You have a list of my open questions. My request to be able to achieve a swift settlement of this litigation is that you give me good faith answers to my questions, as well as promise that this U.S. Attorney's Office adopts for the U.S. Attorney the Federal Reserve Bank model for speech transparency from this point going forward.

Your office is almost there, as you can see. It is just about formalising in writing, possibly in the form of a policy for this U.S. Attonrey's Office, of your Office's commitment to this standard. I am not asking for a lot. But you need to be honest and forthcoming about being willing to publicly adopt that standard. If the U.S. Attorney's Office followed that standard, this FOIA Litigation and the underlying FOIA Request would not have been required.

To make our call fruitful on Monday, please confer with the Acting U.S. Attorney so you can come prepared with a stated willingness to adopt the Federal Reserve Bank standard for speech transparency going forward for this U.S. Attorney's Office. Any such announcement would be a significant achievement for the Acting U.S. Attorney. The Acting U.S. Attorney would be building upon -- and exceeding -- the advocacy for transparency made by the former U.S. Attorney. At the very minimal, this could be a policy that the Acting U.S. Attorney adopts in writing for himself. I am willing to settle for this as a reform in addition to your good faith answers to my other questions. Note that some of my other questions could possibly be waived if you could begin by offering such a proposed reform as a condition of settlement.

I look forward to your suggestions of timing for Monday's call. I am looking forward to having a very successful call on Monday, so we can bring this litigation to a conclusion. Thank you very much.

Louis Flores

Publisher

Progress Queens

louis.flores@progressqueens.com

Skype : maslowsneeds

1 (929) 279-2292

Web : <http://www.progressqueens.com>

Twitter : @ProgressQueens

Donate : <http://www.progressqueens.com/donate/>

On August 3, 2017 at 10:08 AM "Tinio, Rebecca (USANYS)" <Rebecca.Tinio@usdoj.gov> wrote:

Mr. Flores,

Thank you for your email. We can do a call to try and address your open questions. I have a number of commitments for the next two days, but have a lot of availability on Monday. Would you be able to do a call on Monday?

Regards,

Rebecca S. Tinio

Assistant United States Attorney

United States Attorney's Office

Southern District of New York

86 Chambers Street, 3rd Floor

New York, NY 10007

p: (212) 637-2774

f: (212) 637-2702

From: Louis Flores [<mailto:louis.flores@progressqueens.com>]

Sent: Tuesday, August 01, 2017 12:54 PM

To: Tinio, Rebecca (USANYS) <RTinio@usa.doj.gov>

Subject: RE: Flores v DOJ (17-CV-0036) (Koeltl, J.) ----- Review of FOIA Production

Hi, Ms. Tinio :

I have been thinking about your responses to my questions. I was aiming to wrap this up, not to invoke the spectre of having to begin briefing.

Sadly, you are sounding more like the DOJ that is being corrupted by Trump/AG Sessions than the U.S. Attorney's Office formerly headed by Preet Bharara.

As to the missing speech transcripts, it appears to me that the former U.S. Attorney either took with him the hand-written remarks that I have seen him use to give speeches with him when he left office, or else he is withholding them from the Agency to have exclusivity with them due to his reported \$1 million book deal, an issue I will raise if we have to brief on this case. His speech records are Federal records, and they are deliverable in response to this FOIA Request/FOIA Lawsuit.

The way to settle this case immediately would be for the DOJ to : (i). offer honest answers to the questions you ignored/skipped over below and to (ii). make a commitment for the U.S. Attorney heading the Southern District to adopt the Federal Reserve Bank model for speech transparency from this point going forward.

If you are willing to discuss how we can work toward reaching an immediate settlement, I am open to having a call or else a meeting in person.

Louis Flores

Publisher

Progress Queens

louis.flores@progressqueens.com

Skype : maslowsneeds

1 (929) 279-2292

Web : <http://www.progressqueens.com>

Twitter : @ProgressQueens

Donate : <http://www.progressqueens.com/donate/>

On July 25, 2017 at 1:28 PM Louis Flores <louis.flores@progressqueens.com> wrote:

Thank you for these answers. I will review your answers over the next few days, and I will get back to you on Monday.

Louis Flores

Publisher

Progress Queens

louis.flores@progressqueens.com

Skype : maslowsneeds
1 (929) 279-2292

Web : <http://www.progressqueens.com>

Twitter : @ProgressQueens

Donate : <http://www.progressqueens.com/donate/>

On July 25, 2017 at 11:49 AM "Tinio, Rebecca (USANYS)" <Rebecca.Tinio@usdoj.gov> wrote:

Mr. Flores, I can now confirm, with respect to your first question, that the pages in the cost report that were not released did not relate to costs or expenses associated with Mr. Bharara's speeches, and therefore were not responsive to the FOIA requests.

Regards,

Rebecca S. Tinio
Assistant United States Attorney
United States Attorney's Office
Southern District of New York
86 Chambers Street, 3rd Floor
New York, NY 10007
p: (212) 637-2774
f: (212) 637-2702

From: Tinio, Rebecca (USANYS)
Sent: Monday, July 24, 2017 6:36 PM
To: 'Louis Flores' <louis.flores@progressqueens.com>
Subject: RE: Flores v DOJ (17-CV-0036) (Koeltl, J.) ----- Review of FOIA Production

Mr. Flores,

Thank you for your patience. Below are responses in red to the issues you raised.

Best regards,

Rebecca S. Tinio
Assistant United States Attorney
United States Attorney's Office
Southern District of New York
86 Chambers Street, 3rd Floor
New York, NY 10007
p: (212) 637-2774
f: (212) 637-2702

**

0/. Generally, I noticed that the FMIS2 report was missing many numbered pages without explanation. Was that because the withheld pages were for trips or travel that was not undertaken for the delivery of speeches by the U.S. Attorney ? Can you make this representation, so I don't have to seek the withheld records from the FMIS2 Report ?

It is likely that the pages that were not released related to travel or expenses for purposes other than speeches, but we will confirm this as soon as we can.

1/. Of the records that were redacted in part (RIP), why did the DOJ redact all the names of individuals who e-mailed the U.S. Attorney to arrange for speeches ? What privacy right does an individual have in records that become Federal records, when that individual is seeking to solicit, arrange, or to coordinate a speech by the former U.S. Attorney when that speech was being made in his capacity as a "prosecutor" as part of his "role" and/or "duty" ? The application of the redactions did not appear to be uniformly applied. For example, in some records, the DOJ produced records without concern about privacy, (i) like in some questionnaires, where the names of individuals were provided, who were also participating in events at which the former U.S. Attorney was expected to speak ; and (ii) like on cost records that pertained to the U.S. Attorney's travel schedule for events not covered by the FOIA Request, and no redaction was applied to that information. Given that the DOJ did not apply redactions with a concern for privacy, the DOJ can be considered to have waived some of its rights.

Generally speaking, the names of public figures were not redacted, and the names of private individuals were redacted pursuant to FOIA Exemptions (b)(6) and (b)(7)(C).

2/. How many of the 206 records withheld in full (WIF) were questionnaires, pages from the FMIS2 report (if any), or transcripts ?

We do not believe that any of the pages withheld in full were from questionnaires, cost reports, or transcripts.

3/. Will you be providing a *Vaughn* Index of the records withheld in full (WIF) ?

If this matter proceeds to briefing, the Government will, consistent with the weight of applicable case law, provide a *Vaughn* index with its opening summary judgment brief, outlining all withholdings. In general, the records withheld in full were withheld as either non-responsive, or pursuant to FOIA Exemptions (b)(5), (b)(6), and/or (b)(7)(C).

4/. According to entries noted in the spreadsheet, the U.S. Attorney and the U.S. Attorney's Office have made public representations that the speeches made by the former U.S. Attorney were given in his role as a prosecutor and as result of his duty, respectively. Given that the Federal Records Act states that Federal records are documentation created or received in any medium that provides evidence of an Agency's organisation, function, decision, procedures, and transactions, how could it be that records were withheld in full (WIF) if these records go to Agency's organisation, function, decision, procedures, and transactions ? (See 44 U.S. C. Chap. 21, 29, 31, 33 ; accord 36 CFR 1200-1299).

Please see the response to question (3) with respect to the reasons that some pages were withheld in full. To clarify, no records reflecting a speech actually given by former U.S. Attorney Preet Bharara (*e.g.*, transcripts, videos, visual aids used during speeches or press conferences, final written versions of speeches) were withheld either in whole or in part. All of those records were produced in their entirety and unredacted. The records that were withheld in full were either nonresponsive or related to other aspects of the FOIA requests in this matter (*e.g.*, communications containing privileged legal advice pertaining to speeches).

5/. The written remarks used by the former U.S. Attorney to deliver speeches are also considered Federal records ; if no other transcript or recording of a speech exists, then the written remarks must be produced, particularly since the FOIA Request was explicit on the production of transcripts and complete speeches. Additionally, the production of written remarks would need to be produced, given that Federal records retention mandates apply to records of departing U.S. Attorneys.

Please see the response to question (4) with respect to the production of all records reflecting a speech actually given by former U.S. Attorney Preet Bharara. The Government conducted reasonable searches to locate and process all materials relating to speeches given by Mr. Bharara during his time as the U.S. Attorney.

6/. In less than a handful of times the DOJ provided video recordings of speeches given by the former U.S. Attorney (not including press conferences that announced the unsealing or pressing of charges). Can you give me an explanation for why less than a handful of times there were video recordings of speeches (not including press conferences) ? Are any video files being withheld ? If no video files are being withheld, is this an area where a reform can be enacted by the U.S. Attorney's Office going forward to ensure compliance with the preservation of an Agency's functions, decisions, procedures, and/or transactions ?

The Government conducted reasonable searches to locate and process all existing videos of speeches and press conferences given by Mr. Bharara during his time as the U.S. Attorney, and released all of those videos in their entirety.

7/. As noted several times on the spreadsheet, given the records retention mandates applicable to the U.S. Attorney's Office, what determined why only some speeches were video-recorded, why only some speeches had transcripts, and why only some speeches were linked to the U.S. Attorney's Web site ? If the failure to preserve or to make records (like video-recordings) to retain was an oversight of records retention policies, can the U.S. Attorney's Office make representation that all records of speeches will be preserved going forward as a reform ? As I have stated numerous times, enacting a reform asserting the preservation of future records would be one way we could settle in good faith this litigation.

Please see the above responses regarding the Government's reasonable efforts to search for, locate, and process materials relating to the speeches and press conferences given by former U.S. Attorney Preet Bharara, in compliance with FOIA.

8/. Specifically, some of the entries on the spreadsheet marked with a "Y" in the "Priority" column are for us to resolve some of the above general questions.

There is at least once instance where the only records of a press conference were an MP4 video file and a .PDF of prepared remarks ; this entry did not appear on the 'LINKS TO DOCUMENTS.docx' file that was produced on the thumbdrive, when it appears that it should have been included ; I would like to know if this was an oversight ? In an another instance, a questionnaire was produced with an embedded .PDF file that may not have been produced ; that .PDF attachment needs to be produced. Some of the specific questions could be resolved if background can be provided about such entries on the spreadsheet. This background could be provided on a phone call between you and I, or between you and I and your paralegal, or between your paralegal and I, whichever is most efficient for you, so we can try to resolve as much of the minor, specific issues.

Please see the above responses regarding the Government's reasonable efforts to search for, locate, and process materials relating to the speeches and press conferences given by former U.S. Attorney Preet Bharara. The Government conducted reasonable searches for all documents responsive to the FOIA

requests; not all types of materials (e.g., demonstratives, etc.) exist or were located for all of Mr. Bharara's speeches.

Whenever available, all attachments were processed and released subject to applicable exemptions to FOIA.

9/. I have some questions about costs, and these, too, can most likely be resolved during a phone call.

10/. It appears that the DOJ may have provided records about solicitations for speeches where there was no speech ever given by the former U.S. Attorney. Because so many records have been withheld, how I am supposed to know if a questionnaire, a flyer, an invitation, an RSVP form, or a ticket request form was never accepted ? This could perhaps be resolved during a phone call, too, but I would appreciate general guidance about those situations.

As stated above, the Government has conducted reasonable searches for all documents responsive to the FOIA requests, which may have, in some instances and out of an abundance of caution, included some materials relating to speeches that ultimately did not occur.

11/. Lastly, in some of the speeches given by the former U.S. Attorney or in some of the press reports published with remarks attributed to the former U.S. Attorney, the former U.S. Attorney referenced still yet other speeches before various types of groups or bodies. Those references are noted in the spreadsheet, but it is not clear if the records for those other speeches for all the groups or bodies referred to by the former U.S. Attorney were produced.

Without limitation, in at least one of those references the business School at NYU was mentioned, but no records appear to have been produced of a speech at the business school at NYU (unless that specific information was not provided by the DOJ). Entire notices of these references appear toward the end of the spreadsheet. Questions about these records could also be resolved during a conference call.

Again, as stated above, the Government has conducted reasonable searches for all documents responsive to the FOIA requests, as FOIA requires, in the locations where the Government believed that responsive documents would be located.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

LOUIS FLORES,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

17-CV-0036 (JK)

**AFFIRMATION
OF SERVICE**

I, **LOUIS FLORES**, declare under penalty of perjury that I have served a copy of the attached **PLAINTIFF'S LETTER REQUEST FOR JUDICIAL REASSIGNMENT** by **E-MAIL** to : **REBECCA.TINIO@USDOJ.GOV** upon the following party : Rebecca Tinio, Esq., c/o United States Attorney's Office, Southern District of New York, 86 Chambers Street, 3rd Floor, New York, New York 10007.

Dated : Jackson Heights, New York
09 August 2017



Louis Flores
34-21 77th Street, Apt. 406
Jackson Heights, New York 11372
Phone : (929) 279-2292
louis.flores@progressqueens.com